

Introduced by Senator Leno

February 27, 2015

An act to amend Sections 1473 and 1485.55 of the Penal Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

SB 694, as introduced, Leno. New evidence: habeas corpus: motion to vacate judgment: indemnity.

Existing law allows every person who is unlawfully imprisoned or restrained of his or her liberty to prosecute a writ of habeas corpus to inquire into the cause of his or her imprisonment or restraint. Existing law allows a writ of habeas corpus to be prosecuted for, but not limited to, false evidence that is substantially material or probative to the issue of guilt or punishment that was introduced at trial and false physical evidence which was a material factor directly related to the plea of guilt of the person.

This bill would additionally allow a writ of habeas corpus to be prosecuted on the basis of new evidence which would raise a reasonable probability of a different outcome if a new trial were granted.

Existing law requires the California Victim Compensation and Government Claims Board to recommend an appropriation be made by the Legislature for the purpose of indemnifying a person if the evidence shows that a crime with which the person was charged was either not committed at all, or, if committed, was not committed by that person. Existing law requires that the appropriation recommended shall be a sum equivalent to \$100 per day of incarceration served subsequent to the person's conviction. If a court grants a writ of habeas corpus or vacates a judgment on the basis of new evidence and finds that the new evidence points unerringly to innocence, existing law requires the

board to recommend an appropriation to the Legislature pursuant to these provisions without a hearing.

This bill would require the board to recommend an appropriation to the Legislature if the court finds that the new evidence raises a reasonable probability of a different outcome if a new trial were granted.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1473 of the Penal Code is amended to
2 read:

3 1473. (a) Every person unlawfully imprisoned or restrained
4 of his or her liberty, under any pretense, may prosecute a writ of
5 habeas corpus to inquire into the cause of his or her imprisonment
6 or restraint.

7 (b) A writ of habeas corpus may be prosecuted for, but not
8 limited to, the following reasons:

9 (1) False evidence that is substantially material or probative on
10 the issue of guilt or punishment was introduced against a person
11 at a hearing or trial relating to his or her incarceration.

12 (2) False physical evidence, believed by a person to be factual,
13 probative, or material on the issue of guilt, which was known by
14 the person at the time of entering a plea of guilty, which was a
15 material factor directly related to the plea of guilty by the person.

16 (3) *New evidence exists which would raise a reasonable*
17 *probability of a different outcome if a new trial were granted.*

18 (c) Any allegation that the prosecution knew or should have
19 known of the false nature of the evidence referred to in *paragraphs*
20 *(1) and (2) of subdivision (b)* is immaterial to the prosecution of
21 a writ of habeas corpus brought pursuant to *paragraph (1) or (2)*
22 *of subdivision (b).*

23 (d) ~~This section shall not be construed as limiting~~ *This section*
24 *does not limit* the grounds for which a writ of habeas corpus may
25 be prosecuted or ~~as precluding~~ *preclude* the use of any other
26 remedies.

27 (e) (1) For purposes of this section, “false evidence”—~~shall~~
28 ~~include~~ *includes* opinions of experts that have either been
29 repudiated by the expert who originally provided the opinion at a

1 hearing or trial or that have been undermined by later scientific
2 research or technological advances.

3 (2) This section does not create additional liabilities, beyond
4 those already recognized, for an expert who repudiates his or her
5 original opinion provided at a hearing or trial or whose opinion
6 has been undermined by later scientific research or technological
7 advancements.

8 SEC. 2. Section 1485.55 of the Penal Code is amended to read:

9 1485.55. (a) In a contested proceeding, if the court grants a
10 writ of habeas corpus concerning a person who is unlawfully
11 imprisoned or restrained, or when, pursuant to Section 1473.6, the
12 court vacates a judgment on the basis of new evidence concerning
13 a person who is no longer unlawfully imprisoned or restrained,
14 and if the court finds that new evidence on the petition ~~points~~
15 ~~unerringly to innocence~~ *raises a reasonable probability of a*
16 *different outcome if a new trial were granted*, that finding shall be
17 binding on the California Victim Compensation and Government
18 Claims Board for a claim presented to the board, and upon
19 application by the person, the board shall, without a hearing,
20 recommend to the Legislature that an appropriation be made and
21 the claim paid pursuant to Section 4904.

22 (b) If the court grants a writ of habeas corpus concerning a
23 person who is unlawfully imprisoned or restrained on any ground
24 other than new evidence ~~that points unerringly to innocence or~~
25 ~~actual innocence~~ *that raises a reasonable probability of a different*
26 *outcome if a new trial were granted*, the petitioner may move for
27 a finding of innocence by a preponderance of the evidence that
28 the crime with which he or she was charged was either not
29 committed at all or, if committed, was not committed by him or
30 her.

31 (c) If the court vacates a judgment pursuant to Section 1473.6,
32 on any ground other than new evidence ~~that points unerringly to~~
33 ~~innocence or actual innocence~~ *that raises a reasonable probability*
34 *of a different outcome if a new trial were granted*, the petitioner
35 may move for a finding of innocence by a preponderance of the
36 evidence that the crime with which he or she was charged was
37 either not committed at all or, if committed, was not committed
38 by him or her.

39 (d) If the court makes a finding that the petitioner has proven
40 his or her innocence by a preponderance of the evidence pursuant

1 to subdivision (b) or (c), the board shall, without a hearing,
2 recommend to the Legislature that an appropriation be made and
3 ~~the any claim filed shall be~~ paid pursuant to Section 4904.

4 (e) ~~No—A~~ presumption ~~shall~~ *does not* exist in any other
5 proceeding for failure to make a motion or obtain a favorable ruling
6 pursuant to subdivision (b) or (c).

7 (f) If a federal court, after granting a writ of habeas corpus,
8 pursuant to a nonstatutory motion or request, finds a petitioner
9 innocent by no less than a preponderance of the evidence that the
10 crime with which he or she was charged was either not committed
11 at all or, if committed, was not committed by him or her, the board
12 shall, without a hearing, recommend to the Legislature that an
13 appropriation be made and ~~the any claim filed shall be~~ paid
14 pursuant to Section 4904.

15 (g) For the purposes of this section, “new evidence” means
16 evidence that was not available or known at the time of trial that
17 ~~completely undermines the prosecution case and points unerringly~~
18 ~~to innocence~~ *raises a reasonable probability of a different outcome*
19 *if a new trial were granted.*